IN THE HIGH COURT OF JUDICATURE AT BILASPUR

W.P. No. 1286 of 2001

Petitioners : 1. Board of secondary Education
Through its secretary, M.P.C.N.I.,
Seoni (M.P.)

c/o. Salem English School, Raipur
Tahs. & Distt. Raipur (C.G.).

2. Salem English School, through its
Principal, Raipur , Tah.& Distt.
Raipur (C.G.)

P. R. No. 1370
Presented by Shri ... on behalf of petitioners
dated ... 25-7-01

Vs.

Respondents : 1. The Appellate authority-cum-deputy
Labour commissioner, Raipur,
Distt. Raipur (C.G.)

2. The controlling authority under
The payment of gratuity Act, Raipur
Division, Raipur (C.G.)

3. Smt. T. Parera,
through Shri R.N.Vyas, Advocate,
Vivekanand Nagar, Raipur (C.G.)

NOTARY ... Govt. of Madhya Pradesh

WRIT PETITION UNDER ARTICLES 226/227 OF THE CONSTITUTION OF INDIA FOR ISSUANCE OF APPROPRIATE WRIT, WRITS, ORDER DIRECTION ETC.

1. Particulars of the Petitioners:
As mentioned in the cause title.

2. Particulars of the respondents:
As mentioned in the cause title.

(7)

HIGH COURT OF CHHATTISGARH AT BILASPUR

Single Bench: Hon'ble Mr. Justice **Satish K. Agnihotri.**

Writ Petition No. 1286 of 2001

Petitioners		Board of Secondary Education and another
	Versus	
Respondents		The Appellate Authority-cum-Deputy Labour Commissioner, Raipur and others

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Shri Sanjay K. Agarwal, Advocate for the petitioners.

Shri N. K. Vyas, Advocate for the respondent No.3.

ORDER

(Passed on this 26th February, 2007)

The following order of the Court was passed by **Satish K. Agnihotri, J.**

1. The present petition filed by the petitioner under Articles 226/227 of the Constitution of India seeks a writ in the nature of certiorari against the order dated 7.3.2001, passed by the appellate authority i.e. Deputy Labour Commissioner, Chhattisgarh, Raipur, under the Payment of Gratuity Act, 1972 (for short 'the Act,1972), in Appeal Case No. 189/P.G.A./99.
2. The admitted facts in nutshell are that the respondent No.3 was employed as Teacher in the petitioner No.2 School. Admittedly, the said school was fully Govt. aided institution. The respondent No.3 was employed since 30.9.1974 and he was terminated from service w.e.f. 30.4.1991.
3. The respondent No.3 was denied payment of gratuity under the provisions of the Act, 1972. Being aggrieved the respondent No.3 filed an application before the controlling authority under the Payment of Gratuity Act, District- Bilaspur. The authority after

hearing both the parties by his order dated 20.5.1999 (Annexure P/4) allowed the application filed by the respondent No.3 directing the respondents to pay gratuity under the provisions of the Payment of Gratuity Act with interest at the rate of 10% per annum from the date of the order till the actual date of payment.

4. Being aggrieved, the petitioners had filed an appeal under Section 7(7) of the Act, 1972 being Appeal Case No. 189/PGA/99 before the appellate authority i.e. Deputy Labour Commissioner, Chhattisgarh, Raipur. The learned authority by his order dated 7.3.2001 (Annexure P/7) dismissed the appeal of the petitioners (appellants) ignoring the decision of the Supreme Court in **Miss A. Sundarambal Vs. Govt. of Goa, Daman & Diu and others** (AIR 1988 SC 1700) wherein it was held that 'teacher' is not an 'employee' under the provisions of the Act 1972, the petitioner, herein, being a teacher, is not entitled to gratuity under the Act, 1972.

5. Being aggrieved the petitioners have filed this writ petition praying for quashing of the order dated 20.5.1999 (Annexure P/4) and the order dated 7.3.2001 (Annexure P/7) 31.3.1997 passed by the appellant authority.

6. Shri Sanjay K. Agarwal, learned counsel for the petitioners submits that the decision in the case of **Miss A. Sundarambal** (supra) has been considered in the case of **Ahmedabad Pvt. Primary Teachers' Assn. Vs. Administrative Officer and others** { (2004) 1 SCC 755 } whereby benefit of gratuity was denied to the teacher holding not an employee under the provisions of the Act, 1972.

(59)

7. In the present case, the question of law as to whether a teacher is entitled to payment of gratuity under the provisions of the Act, 1972 is involved and the identical question of law was considered by the Supreme Court in **Ahmedabad Pvt. Primary Teachers Assn.**(Supra) and has held as under:-

> "24. The contention advanced that teachers should be treated as included in the expression "unskilled" or "skilled" cannot, therefore, be accepted. The teachers might have been imparted training for teaching or there may be cases where teachers who are employed in primary schools are untrained. A trained teacher is not described in the industrial field or service jurisprudence as a "skilled employee". Such adjective generally is used for an employee doing manual or technical work. Similarly, the words "semi-skilled" and "unskilled" are not understood in educational establishments as describing nature of job of untrained teachers. We do not attach much importance to the arguments advanced on the question as to whether "skilled", "semi-skilled" and "unskilled" qualify the words "manual", "supervisory", "technical" or "clerical" or the above words qualify the word "work". Even if all the words are read disjunctively or in any other manner, trained or untrained teachers do not plainly answer any of the descriptions of the nature of various employments given in the definition clause. Trained or untrained teachers are not "skilled", "semi-skilled", "unskilled", "manual", "supervisory", "technical" or "clerical" employees. They are also not employed in "managerial" or "administrative" capacity. Occasionally, even if they do some administrative work as part of their duty with teaching, since their main job is imparting education, they cannot be held employed in "managerial" or "administrative" capacity. The teachers are clearly not intended to be covered by the definition of "employee".

However, the Supreme Court in para 26 has made it clear that the States are free to frame separate statutes, rules and regulations granting the benefit of gratuity to the teachers in educational institutions which are more or less beneficial than the gratuity benefits provided under the Act, 1972.

8. Learned counsel for the petitioners cited a decision of this Court in the case of **Jawahar Singh Bais Vs. Secretary, Chhattisgarh Sikshan Samiti, Bilaspur & others** { 2006 (III) MPJR-CG 102} in support of his submissions.

9. Having heard learned counsel for the parties, I am of the view that the ratio laid down by the Supreme Court in **Ahmedabad Pvt. Primary Teachers' Assn.** (Supra) and by this Court in the case of **Jawahar Singh Bais** (Supra), is squarely applicable to the facts of the present case. Accordingly, the respondent No.3, who is a teacher, is not entitled to grant of gratuity under the Act, 1972. However, if any payment as gratuity has been made to the respondent No.3/teacher, the same shall not be recoverable.

10. For the reasons stated above, the petition is allowed. The order dated 20.5.1999 (Annexure P/4) and the order dated 7.3.2001 (Annexure P/7) are quashed. No order as to costs.

Sd/-
Satish K. Agnihotri
Judge

Thakur